-BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
IROQUOIS INVESTMENT CORPORATION)

Appearances:

For Appellant: Nathan Schwartz, Attorney at Law.

For Respondent: W.M. Walsh, Assistant Franchise Tax Commissioner; James J. Prditto, Franchise Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 27 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in denying the claim of Iroquois Investment Corporation for a refund of tax in the amount of $107.49 for the taxable year ended December 31, 1937.

Appellant, a California Corporation doing business only in this State, in 1936 owned securities of a value in excess of a million dollars, and two pieces of residential property which, with furnishings, had a value of about $137,000. Sixty per cent of its capital stock was owned by Grace R. Glaser, and the remaining forty per cent by Caryl S. Fleming, her son, both residents of California. Grace R. Glaser rented one of the residential properties for six thousand dollars a year. In the year 1936 the income of the Corporation consisted of dividends $41,589.56, interest $90.00, rents $6,000.00 and proceeds of sale of stock rights $628.14. Deductions taken on the 1936 return were interest $28,726.55, repairs $118.60, taxes $1,313.39, depreciation $7,700.00, salaries $6,000.00, insurance $954.19, office expense $134.38, and fee for investment statistical service $192.00.

The sole question presented in this appeal is whether Appellant, regarded by the Franchise Tax Commissioner as a personal holding company under the provisions of the Personal Income Tax Act of 1935, is subject to a franchise tax, measured by net income of the year 1936, under the provisions of the Bank and Corporation Franchise Tax Act. The Appellant contends that the Commissioner has acted inconsistently in refusing to regard it as a holding company not doing business in this State, and therefore subject only to a minimum tax of $25 under Section 4(4) and (5) of the Bank and Corporation Franchise Tax Act, and at the same time regarding it as a personal holding

company under Section 34 of the Personal Income Tax Act and taxing its income to its shareholders as though it were a partnership. It is its position that either the individual shareholders of the Corporations or the Corporation itself should pay taxes upon its income, but that both should not he required to do so. In this Appeal we shall consider only the question of the application of the Bank and Corporation Franchise Tax Act. The status of the Corporation and its shareholders under the Personal Income Tax Act is considered in the Appeal of Grace R. Glaser, also decided this day.

The pertinent provisions of the Bank and Corporation Franchise Tax Act are as follows:

> "Sec. 4(3) With exception of financial corporations, every corporation doing business within the limits of this State and not expressly exempted from taxation by the provisions of the Constitution of this State or by this act, shall annually pay to the State, for the privilege of exercising its corporate franchises within this State, a tax according to or measured by its net income, to be computed, in the manner hereinafter provided, at the rate of four per centum upon the basis of its net income for the next preceding fiscal or calendar year. In any event, each such corporation shall pay annually to the State, for the said privilege, a minimum tax of twenty-five dollars.
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> (4) Any corporation organized to hold the stock or bonds of any other corporation or corporations, and not trading in such stock or bonds, or other securities held, and engaging in no other activities than the receipt and disbursement of dividends from such stock or interest from such bonds, shall not be considered a corporation doing business in this State for the purposes of this act,
>
> (5) Every corporationnot otherwise taxed in pursuance of this section and not expressly exempted by the provisions of this act or the Constitution of this State shall pay annually to the State a tax of twenty-five dollars."

Appellant is not exempt from a tax measured by its net income under Section 4(4) by reason of "engaging in no other activities than the receipt and disbursement of dividends," since it collected rentals of $6,000.00, traded in stock rights, and managed real property of substantial value. Although it did not make any substantial sales or exchanges of capital assets during the year, the fact that it subscribed to an invest-

ment service is some evidence that it would have entered into such transactions had it been deemed advisable to do so.

Nor is it exempt from a tax measured by its net income by reason of not "doing business" within the meaning of *Section* 4(3). Section 5 defines "doing business" as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." In Union Oil Associates v. Johnson, 2 Cal. (2d) 727, it was held that a corporation organized and operated solely for the purpose of owning and holding the stock of another corporation, and distributing dividends paid thereon to its stockholders, the only other assets of the corporation consisting of small amounts of cash and office furniture and equipment, was not "doing business" within the meaning of the Act. Appellant's operations do not bring it within this case as it held real property for rental purposes and, since it subscribed to a stock and bond service, would apparently have traded more extensively in its security investments if such had appeared advisable. It was more than a mere conduit through which the income from securities was passed on to its shareholders. Under these circumstances, the Appellant was unquestionably doing business within the meaning of the Act. Golden State Theatre and Realty Corporation v. Johnson, 21 Cal. (2d) 493; Carson Estate Company v. McColgan, 21 Cal. (2d) 516.

O R D E R

Pursuant to the views expressed in the opinion of the Board *on* file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. McColgan, Franchise Tax Commissioner, in denying the claim of Iroquois Investment Corporation for a refund of tax in the amount of $107.49 for the taxable year ended December 31, 1937, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 11th day of May, 1944, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
Geo. R. Reilly, Member
Harry B. Riley, Member
J. H. Quinn, Member

ATTEST: Dixwell L. Pierce, Secretary